

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

DALE SCHEER, and)
MICHAEL A. FILKINS)
)
Plaintiffs,)
)
v.) Case No. 05-cv-571-WEC
)
M.R.S. ASSOCIATES, INC.) **Jury Demanded**
)
Defendant.)

AMENDED COMPLAINT

INTRODUCTION

1. This action seeks redress for collection practices that violate the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, and the Wisconsin Consumer Act, Ch. 421-427, Wis. Stat.

JURISDICTION AND VENUE

2. The court has jurisdiction to grant the relief sought by the plaintiffs pursuant to 15 U.S.C. § 1692k, and 28 U.S.C. §§ 1331 and 1337. Venue in this District is proper in that defendant directed its collection efforts into the District.

PARTIES

3. Plaintiff Dale R. Scheer is an individual who resides at 3554 South Whitnall Avenue, Milwaukee, WI 53207.

4. Plaintiff Michael A. Filkins is an individual who resides at 512 ½ Montana Avenue, South Milwaukee, WI 53172.

5. Plaintiffs are "consumers" as defined in the FDCPA, 15 U.S.C. § 1692a(3), in that defendants sought to collect from them debts allegedly incurred for personal, family or household purposes.

6. Defendant M.R.S. Associates, Inc. (MRS) is a collection agency with offices in New Jersey. Its registered agent is National Registered Agents, Inc., 901 S. Whitney Way, Madison, Wisconsin 53711.

7. MRS is engaged in the business of collecting debts owed to others and incurred for personal, family or household purposes. Defendant is a debt collector as defined in 15 U.S.C. § 1692a.

FACTS

8. On or about February 10, 2005, Defendant sent Plaintiff Scheer a debt collection letter regarding an alleged debt owed to "CHASE BANKCARD SERVICES INC." This was the first letter Scheer received from Defendant. *See Exhibit A.*

9. Exhibit A states in part:

"If the debt is not in dispute, then you have an important decision to make: honor your contractual obligation and receive significant positive benefits from satisfying the debt or continue not honoring your contractual obligation and face the possibility of negative consequences. The negative consequences are determined by the terms and conditions of your contract, the applicable laws in your state, and our client's willingness to incur additional costs and expenses (which may in turn be passed on to you!)."

10. On information and belief, the "Chase Bankcard Services, Inc." is not the name of the creditor. On information and belief, the creditor was "Chase Manhattan Bank U.S.A., N.A."

11. On or about December 11, 2004, Defendant sent Plaintiff Filkins a debt collection letter regarding an alleged debt owed to "CAPITAL ONE." This was the first letter Filkins received from Defendant. *See Exhibit B.*

12. On information and belief, "Capital One" is not the true name of the creditor. There are many different entities that include "Capital One" in their names.

COUNT I — FDCPA

13. Plaintiffs incorporate the above-numbered paragraphs by reference.

14. Defendant's statement that the costs and expenses of collection may be passed on to the consumer is false and misleading, because no additional costs can be passed on to plaintiff under state law. The Wisconsin Consumer Act prohibits shifting collection costs, including attorneys' fees, to consumers. *See* Wis. Stat. §§ 422.411, 422.413.

15. Such conduct violates 15 U.S.C. § 1692e.

COUNT II — FDCPA

16. Plaintiffs incorporate the above-numbered paragraphs by reference.

17. Neither Exhibit A nor Exhibit B state the name of the creditor, in violation of 15 U.S.C. §§ 1692g(a)(2) and 1692e.

COUNT III — WCA

18. Plaintiffs incorporate the above-numbered paragraphs by reference.

19. Chapter 427 of the Wisconsin Statutes, part of the Wisconsin Consumer Act, regulates debt collectors and debt collection activities. The statute reads, in relevant part:

427.104 Prohibited Practices. (1) In attempting to collect an alleged debt arising from a consumer credit transaction or other consumer transaction, ... where there is an agreement to defer payment, a debt collector may not ...

(j) Claim, or attempt or threaten to enforce a right with knowledge or reason to know that the right does not exist; ...

20. Defendant's statement that the costs and expenses of collection may be passed on to the consumer is false and misleading, because no additional costs can be passed on

to plaintiff under state law. The Wisconsin Consumer Act prohibits shifting collection costs, including attorneys' fees, to consumers. *See* Wis. Stat. §§ 422.411, 422.413.

CLASS ALLEGATIONS

21. Plaintiffs bring these claims on behalf of a class, consisting of (a) all natural persons in the State of Wisconsin (b) who were sent a collection letter in the forms represented by Exhibit A or B, (c) seeking to collect a debt for personal, family or household purposes, (d) on or after a date one year prior to the filing of this action, (e) which was not returned by the postal service.

22. The class is so numerous that joinder is impracticable. On information and belief, there are more than 50 members of the class.

23. There are questions of law and fact common to the members of the class, which common questions predominate over any questions that affect only individual class members. The predominant common question is whether Defendant has violated 15 U.S.C. §§ 1692e, 1692g and Wis. Stat. § 427.104(1)(j).

24. Plaintiffs' claims are typical of the claims of the class members. All are based on the same factual and legal theories.

25. Plaintiffs will fairly and adequately represent the interests of the class members. Plaintiffs have retained counsel experienced in consumer credit and debt collection abuse cases.

26. A class action is superior to other alternative methods of adjudicating this dispute. Individual cases are not economically feasible.

WHEREFORE, plaintiffs request that the Court enter judgment in favor of plaintiffs and against defendants for:

- a. Statutory damages;

- b. Attorney's fees, litigation expenses and costs of suit;
- c. Such other or further relief as the Court deems proper.

JURY DEMAND

Plaintiffs demand trial by jury.

Respectfully submitted,

S/ John D. Blythin
Robert K. O'Reilly (SBN 1027032)
John D. Blythin (SBN 1046105)
ADEMI & O'REILLY, LLP
3620 East Layton Avenue
Cudahy, Wisconsin 53110
roreilly@ademilaw.com
(414) 482-8005
(414) 482-8001 (FAX)

Exhibit A



Return Address :
M.R.S. ASSOCIATES, INC.
3 EXECUTIVE CAMPUS, SUITE 400
CHERRY HILL NJ 08002



Office Handling Your Account :
M.R.S. Associates, Inc.
3 Executive Campus, Suite 400
Cherry Hill NJ 08002
1-866-709-0961

Office Hours :
Monday - Thursday 8am - 9pm ET
Friday 8am - 5pm ET
Saturday 8am - 12pm ET
Sunday 9am - 12pm ET

February 10, 2005

S-DK014670 L-001 A-05550017
P01IXU00201510 I03021
DALE R SCHEER
3554 S. WHITNALL AVE
2
MILWAUKEE WI 53207-3369

Payment To / Correspondence To :
M.R.S. ASSOCIATES, INC.
3 EXECUTIVE CAMPUS, SUITE 400
CHERRY HILL NJ 08002

CLT ACCT #:
5490922890256721

MRS ACCT #:
05550017

ACCT. BALANCE
\$2369.48

RE : CHASE BANKCARD SERVICES INC.

IMPORTANT: TO RECEIVE PROPER CREDIT BE SURE TO ENCLOSE THIS PORTION WITH YOUR PAYMENT IN FULL
SEE REVERSE SIDE FOR CREDIT CARD AND WESTERN UNION PAYMENT INFORMATION

RE: CHASE BANKCARD SERVICES INC.
CLT ACCT#: 5490922890256721
MRS ACCT#: 05550017
ACCOUNT BALANCE : \$2369.48

Office Handling Your Account :
M.R.S. Associates, Inc.
3 Executive Campus, Suite 400
Cherry Hill NJ 08002
1-866-709-0961

Dear DALE R SCHEER,

The above referenced client has placed your account with our office for collection. This decision was made due to your continued failure to meet your contractual obligation. If for some reason you believe this debt is not valid, please review your rights listed at the bottom of this letter.

If the debt is not in dispute, then you have an important decision to make: honor your contractual obligation and receive significant positive benefits from satisfying the debt or continue not honoring your contractual obligation and face the possibility of negative consequences. The negative consequences are determined by the terms and conditions of your contract, the applicable laws in your state, and our client's willingness to incur additional costs and expenses (which may in turn be passed on to you!).

Clearly our client would prefer to work with you than against you, however, the decision to proceed with further collection activity is determined by you and your willingness to honor your commitment.

Which would you prefer the positive benefits or negative consequences? The choice is yours!

IMPORTANT CONSUMER INFORMATION

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

Sincerely,

Patrick Hee

Patrick Hee
Assistant Director of Operations 1-866-709-0961
M.R.S. Associates, Inc.

Tax time is a great time to put nagging issues like this behind you once and for all. Consider using your tax refund to satisfy your outstanding obligation.

If you wish to pay by credit card, please fill out the area below and return in the enclosed envelope or fax to us at the number 856-488-5134 or you may E-Mail credit card information to : payments@mrsassociates.com

For your protection, we request that you provide your credit card verification code in addition to your Master Card, Visa or American Express card number. If you are paying with Master Card or Visa, your verification code is located on the back of your card. It is a three-digit number printed on the signature panel immediately following your account number. If you are paying with American Express, your verification code is located on the front of your card. It is a four-digit number above the credit card number on either the right side or left side of your card. We are requesting this number as an additional security precaution.

Check One: Visa

MasterCard

American Express



Card #:

Credit Card Verification #:

MRS ACCT # :
05550017

Expiration Date: / /

Amount of Payment: \$

Signature of Cardholder

Cardholder Name

Driver's License

Western Union "Quick Collect" - Quick and Easy !

Use Blue and White form

Pay to : M.R.S. Associates, Inc.

Code City : MAPLE State: NJ

For questions about how to pay your bill using Western Union - call them at 800-238-5772 or call our office.

CALIFORNIA RESIDENTS:

The state Rosenthal Fair Debt Collection Practices Act and the federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or www.ftc.gov.

COLORADO RESIDENTS:

FOR MORE INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE WWW.AGO.STATE.CO.US/CAB.HTM.

MASSACHUSETTS RESIDENTS:

NOTICE OF IMPORTANT RIGHTS

YOU HAVE THE RIGHT TO MAKE A WRITTEN OR ORAL REQUEST THAT TELEPHONE CALLS REGARDING YOUR DEBT NOT BE MADE TO YOU AT YOUR PLACE OF EMPLOYMENT. ANY SUCH ORAL REQUEST WILL BE VALID FOR ONLY TEN DAYS UNLESS YOU PROVIDE WRITTEN CONFIRMATION OF THE REQUEST POSTMARKED OR DELIVERED WITHIN SEVEN DAYS OF SUCH REQUEST. YOU MAY TERMINATE THIS REQUEST BY WRITING TO THE COLLECTION AGENCY.

MINNESOTA RESIDENTS:

This collection agency is licensed by the Minnesota Department of Commerce.

NEW YORK CITY RESIDENTS:

New York City Department of Consumer Affairs, license number 1016281.

NORTH CAROLINA RESIDENTS:

North Carolina Department of Insurance, permit number 3122 or permit number 3486.

TENNESSEE RESIDENTS:

This collection agency is licensed by the Collection Service Board, State Department of Commerce and Insurance, 500 James Robertson Parkway, Nashville, Tennessee 37243.

Exhibit B



M.R.S. ASSOCIATES, INC.
3 EXECUTIVE CAMPUS, SUITE 400
CHERRY HILL, NJ 08002



Office Hours :
Mon - Thurs 8am - 9pm EST
Fri - 8am - 5pm EST
Sat - 8am - 12pm EST
Sun - 9am - 12pm EST

December 11, 2004

05372657-001 09114
MICHAEL FILKINS
523 RAWSON CT
SOUTH MILWAUKEE WI 53172-2217

Payment To:/Correspondence To:
M.R.S. ASSOCIATES, INC.
3 EXECUTIVE CAMPUS, SUITE 400
CHERRY HILL, NJ 08002

CLT ACCT # :	MRS ACCT # :	ACCOUNT BAL. :
4862362309744285	05372657	\$993.06
RE : CAPITAL ONE		

(Interest may accrue on unpaid balances)

← **IMPORTANT: TO RECEIVE PROPER CREDIT BE SURE TO ENCLOSE THIS PORTION WITH YOUR PAYMENT IN FULL** →
SEE REVERSE SIDE FOR CREDIT CARD AND WESTERN UNION PAYMENT INFORMATION

RE: CAPITAL ONE
CLT ACCT#: 4862362309744285
MRS ACCT#: 05372657
ACCOUNT BALANCE : \$993.06 (Interest may accrue on unpaid balances)

M.R.S. ASSOCIATES, INC.
3 EXECUTIVE CAMPUS, SUITE 400
CHERRY HILL, NJ 08002

Dear MICHAEL FILKINS,

The above referenced client has placed your account with our office for collection. This decision was made due to your continued failure to meet your contractual obligation. If for some reason you believe this debt is not valid, please review your rights listed at the bottom of this letter.

If the debt is not in dispute, then you have an important decision to make: honor your contractual obligation and receive significant positive benefits from satisfying the debt or continue not honoring your contractual obligation and face the possibility of negative consequences. The negative consequences are determined by the terms and conditions of your contract, the applicable laws in your state, and our client's willingness to incur additional costs and expenses (which may in turn be passed on to you!).

Clearly our client would prefer to work with you than against you, however, the decision to proceed with further collection activity is determined by you and your willingness to honor your commitment.

Which would you prefer the positive benefits or negative consequences? The choice is yours!

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This is an attempt to collect a debt and any information obtained will be used for that purpose.
This communication is from a debt collection agency.

Sincerely,

B. Simone

B. Simone
Director of Operations 1-877-774-7992
M.R.S. Associates, Inc.

PLEASE SEE REVERSE SIDE FOR IMPORTANT INFORMATION
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For your protection, we request that you provide your credit card verification code in addition to your Master Card, Visa or American Express card number. If you are paying with Master Card or Visa, your verification code is located on the back of your card. It is a three-digit number printed on the signature panel immediately following your account number. If you are paying with American Express, your verification code is located on the front of your card. It is a four-digit number above the credit card number on either the right side or left side of your card. We are requesting this number as an additional security precaution.

Check One: Visa



MasterCard



American Express



Card #:

MRS ACCT # :
05372657

Credit Card Verification #:

Expiration Date: ____ / ____ / ____

Amount of Payment: \$ _____

Signature of Cardholder

Cardholder Name _____

Driver's License

Western Union Payment Instructions

Western Union "Quick Collect" - Quick and Easy !

Use Blue and White form

Pay to : M.R.S. Associates, Inc.

Code City : MAPLE State: NJ

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